

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Promoting Efficient Use of Spectrum Through
Elimination of Barriers to the Development of
Secondary Markets

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WT Docket No. 00-230

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking proposing various changes to the Commission's rules and policies governing certain secondary market activities.¹

I. INTRODUCTION AND SUMMARY

Sprint endorses the Commission's general policy shift towards greater reliance upon secondary market mechanisms as a means for efficiently getting spectrum into the hands of those who value it most, and as an effective means to promote intensive spectrum use. As a general matter, minimizing regulation – and the transaction costs associated therewith – and spectrum acquisition costs should allow the market to dynamically allocate spectrum resources in an efficient manner that achieves the Commission's statutory objectives. The Commission should continue its streamlining efforts by applying the market-oriented approaches it developed in the *Report and Order* to the issues raised in the *FNPRM*.

¹ *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003) ("*Report and Order*" or "*FNPRM*").

Specifically, as explained below, the Commission should focus on secondary market activities rather than pursuing underlay or other easement-based authorizations as a means for facilitating access to licensed spectrum by new unlicensed technologies. Secondary market approaches allow licensees to protect their spectrum usage rights and will allow development of interoperability solutions that meet market demand, without posing interference problems in licensed bands. The Commission also should extend its new leasing rules and policies to the Instructional Television Fixed Service and Multipoint Distribution Service on a prospective basis. Finally, and in keeping with market-oriented solutions, the Commission should not regulate or mandate information-sharing mechanisms to facilitate spectrum leasing activities. Sufficient information already exists and if more is required, the market will create a solution tailored to meet that need.

II. SECONDARY MARKET APPROACHES ARE FAR SUPERIOR TO GOVERNMENT-IMPOSED REGULATORY EASEMENT APPROACHES FOR MAXIMIZING EFFICIENT USE OF SPECTRUM

As Sprint has cautioned in a number of proceedings, the use of regulatory easement approaches, such as unlicensed underlay operations, in licensed spectrum raises serious technical and other concerns that have yet to be addressed.² In addition to the lack of record evidence that such approaches are technically feasible, such authorizations would, among other things, reduce licensees' ability to fully utilize their licensed bandwidth, and render licensees effectively helpless to identify, prevent or control potential interference to their licensed operations. In addition, as noted in the *Spectrum Policy Task Force Report*, "there is the concern that once

² See Comments of Sprint Corporation filed in WT Docket 03-66 (filed on Sept. 8, 2003) at 7-15; Comments of Sprint Corporation filed in ET Docket 02-135 (filed on July 8, 2002) at 17-21; Reply comments of Sprint Corporation filed in ET Docket 02-135 (filed on July 23, 2002) at 4-9; Comments of Sprint Corporation filed in ET Docket 02-135 (filed on Jan. 27, 2003) at 13-16; Reply comments of Sprint Corporation filed in ET Docket 02-380 (filed on May 22, 2003) at 1-2. Sprint incorporates the cited sections of these comments and reply comments by reference into the instant comments, as they bear directly upon related issues raised in the *FNPRM*.

unlicensed devices begin to operate in an easement, it may be difficult legally or politically to shut down their operations even if they begin to cause interference or otherwise limit the licensed user's flexibility."³ Further, licensees for many commercial mobile radio services ("CMRS") acquired their licenses at auction for substantial monies and with the reasonable expectation that they will be able to develop and fully utilize their licensed spectrum – an expectation and legal right that should not be jeopardized by unproven concepts. Many licensees not only have paid substantial monies simply to acquire the right to use their spectrum, construct mobile networks and, in some cases, relocate incumbents, but also support numerous public interest benefits on an ongoing basis as a condition of their license. As the Spectrum Policy Task Force cautioned in its report with respect to easement-based spectrum access approaches, the Commission must be sensitive to "the potential impact of [] opportunistic devices on the expectations, business plans, and investment made by licensed spectrum users."⁴

Providing access to licensed spectrum by unlicensed "opportunistic" third parties through secondary market mechanisms represents a far superior option to government-imposed, spectrum easement approaches. Utilization of secondary market mechanisms would provide licensees with the important ability to identify and manage the radiofrequency ("RF") signal contributions into their licensed bandwidth, establish mitigation procedures and allocate related costs and, thus, better prevent or control interference that could otherwise be experienced by their subscribers. Further, allowing licensees to negotiate the terms of secondary use of their spectrum would allow licensees to define precisely what constitutes interference that is harmful to their individual networks, which is more efficient and effective than relying on the Commission to

³ Spectrum Policy Task Force, Report, ET Docket No. 02-135 (rel. Nov. 2002) (*Spectrum Policy Task Force Report*) at 58.

⁴ *Id.* at 58.

adopt a single quantifiable limit that might apply across the service or across given geographic areas, or frequency bands.

The interaction of unlicensed “opportunistic” third parties with licensees through secondary market approaches also could result in the development of interoperability solutions that are dictated by market demand. Further, such secondary market arrangements can dynamically change over time based upon market demand, thus promoting the best use of the spectrum. Indeed, the Spectrum Policy Task Force recommended “looking primarily at the use of secondary markets”⁵ over underlay and other easements-based models as an effective, efficient approach to enhancing access to spectrum by secondary users because “[t]he secondary markets model takes advantage of the flexibility and adaptability of the market to solve access problems” and better avoids the uncertainties and potential pitfalls associated with easement-based approaches identified above.⁶ Finally, Sprint urges the Commission to allow the secondary market approach sufficient time to develop so that its effectiveness can be meaningfully evaluated before considering other options.

III. THE LEASING POLICIES ADOPTED IN THE *REPORT AND ORDER* SHOULD BE EXTENDED TO INSTRUCTIONAL TELEVISION FIXED SERVICE AND MULTIPOINT DISTRIBUTION SERVICE ON A PROSPECTIVE BASIS

As Sprint recently discussed in its reply comments to the *MDS/ITFS NPRM*,⁷ liberalizing the lease requirements that apply to the Instructional Television Fixed Service and the Multipoint Distribution Service (collectively, “MDS/ITFS”) on a prospective basis to negotiate broad lease

⁵ *Id.* at 56; *see also* 58.

⁶ *Id.* at 57. In fact, the Spectrum Policy Task Force concluded that “the secondary market approach has significant potential to foster opportunistic technologies, such as agile-frequency-hopping radios, software defined radios, and adaptive antennas, at reasonable transaction costs.” *Id.*

⁷ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz bands*, 18 FCC Rcd 6722 (2003) (“*MDS/ITFS NPRM*”).

durations and other terms in accordance with their needs would place the nascent MDS/ITFS broadband services on a more equal footing with broadband competitors who now receive the benefits of the new leasing rules, and would also facilitate the deployment of broadband services by MDS/ITFS providers.⁸

In particular, Sprint recommends that the Commission apply, again on a prospective basis, its new *de facto* transfer leasing and spectrum manager leasing rules and policies to the MDS/ITFS services. The Commission has long permitted MDS/ITFS licensees to lease their spectrum under terms similar to the new spectrum manager leasing rules. The degree of oversight required of MDS/ITFS licensees with respect to construction and operation of network facilities mandated under the current MDS/ITFS leasing rules and policies, however, will become increasingly and acutely burdensome and inefficient as lessees move towards the cellularized network systems contemplated for the MDS/ITFS services under the *MDS/ITFS NPRM*. Further, in applying the new spectrum leasing rules and policies to the MDS/ITFS services, the Commission should maintain the requirement that digital ITFS stations utilize 5 percent of their transmission capacity for education programming,⁹ as well as the other special requirements for leasing excess capacity from ITFS licensees set forth at Sections 74.931(c) and 74.931(d) of the Commission's rules.¹⁰

To confirm, in all events, it is imperative that existing MDS/ITFS leases continue in effect under the existing lease terms and conditions. Any alteration of these Commission-

⁸ See Reply Comments of Sprint Corporation filed in WT Docket 03-66 (filed on Oct. 23, 2003) at 23.

⁹ See 47 C.F.R. § 74.931(d)(1).

¹⁰ 47 C.F.R. §§ 74.931(c) and 74.931(d).

sanctioned leases after the fact would inequitably disrupt the reliance expectations of operators and licensees alike, with negative impacts upon business arrangements and plans.¹¹

IV. INFORMATION-SHARING MECHANISMS SHOULD BE GOVERNED BY MARKET FORCES RATHER THAN FCC REGULATION

There is no evidence that there is any need for the collection of additional information from licensees or spectrum lessees about the nature of their operations, such as “more detail about the geographic area actually covered and the frequencies actually used,”¹² beyond that which is already publicly available from the Universal Licensing System (“ULS”) database. In Sprint’s experience, the ULS database has been an extremely useful and adequate tool for identifying licensees by geographic service area (among other search criteria), which is the starting point of any spectrum transaction. Such information also will be available with respect to spectrum leases under the new rules. Requiring licensees and/or lessees to gather and submit additional information on their use of their spectrum would impose unnecessary burdens onto licensees and lessees, and would essentially amount to substituting a new set of transaction and regulatory costs for those that will be eliminated under the new spectrum leasing rules and policies. In addition, as the Commission notes, such information may involve data that involves or implicates business plans or other competitively sensitive information that is not generally available to the public.¹³

¹¹ The Commission historically has grandfathered MDS/ITFS leases executed under prior MDS/ITFS rules and policies when adopting new rules and policies that would otherwise apply. *See Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, Second Report and Order, 6 FCC Rcd 6792, 6800 (1991); *see also Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order, 13 FCC Rcd 19112, 19183 at ¶ 132 (1998).

¹² *FNPRM* at ¶ 225.

¹³ *FNPRM* at ¶ 193.

Identifying and/or bringing together potential buyers and sellers of spectrum, such as listing offers to transfer, assign or lease spectrum, are not appropriate regulatory functions for the FCC. Sales and/or leases of spectrum are inherently private sector transactions driven by private sector considerations. If a need for some kind of information clearinghouse beyond that which is already publicly available develops, it seems likely and appropriate that the private sector will develop a solution. In contrast, having the FCC act as an information clearinghouse would be inefficient, as the costs for compiling information would be borne by licensees rather than the cost-causing parties that seek the information and who would bear such costs if the private parties performed this role. Indeed, it seems likely that maintaining an accurate and up-to-date informational database would be both costly and difficult to achieve.

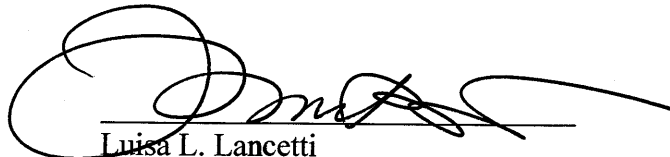
To the extent that “market-makers” or other resource brokers emerge to meet whatever demand might develop for facilitators of spectrum transactions, the Commission should not designate, approve or regulate such entities. More importantly, licensees and/or lessees should not be required to supply any information to such entities – if licensees desire to sell or lease their spectrum, they will already have sufficient incentive to make information available voluntarily.

V. CONCLUSION

For the reasons stated above, Sprint recommends that the Commission: (i) focus on secondary market activities rather than underlay or other easement-based authorizations as a means for facilitating access to licensed spectrum by new unlicensed technologies; (ii) extend its new leasing rules and policies to the Instructional Television Fixed Service and Multipoint Distribution Service on a prospective basis; and (iii) refrain from regulating or mandating information-sharing mechanisms.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read 'L. Lancetti', is written over a horizontal line.

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